

Order Addressing Pending Motions
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1 be automatically lifted without further order from the Court.

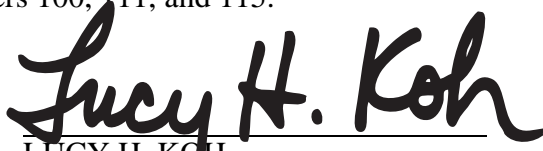
2 Plaintiff has filed a motion to compel the Pelican Bay State Prison Warden to allow him
3 to obtain declarations from inmate witnesses in the Security Housing Unit. Alternatively, he
4 requests appointment of counsel. As stated above, currently pending before the Court is
5 Defendants' motion to dismiss for failure to state a claim. Dismissal for failure to state a claim is
6 a ruling on a question of law. *See Parks School of Business, Inc., v. Symington*, 51 F.3d 1480,
7 1483 (9th Cir. 1995). "The issue is not whether plaintiff will ultimately prevail, but whether he
8 is entitled to offer evidence to support his claim." *Usher v. City of Los Angeles*, 828 F.2d 556,
9 561 (9th Cir. 1987). At this time, Plaintiff's motion for a Court order compelling the Warden to
10 permit him to obtain declarations from other inmates is DENIED without prejudice to renewal
11 after the Court resolves Defendants' motion to dismiss, and request for qualified immunity.
12 Plaintiff's motion, in the alternative, for appointment of counsel is DENIED without prejudice
13 for the reasons already stated in the Court's November 28, 2011 order.

14 Plaintiff's motion for an extension of time to file an opposition is GRANTED. Plaintiff's
15 opposition is due **no later than March 20, 2012**. Defendants' reply shall be filed **fifteen days**
16 thereafter.

17 This order terminates docket numbers 100, 111, and 115.

18 IT IS SO ORDERED.

19 DATED: 1/5/12


LUCY H. KOH
United States District Judge